IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 615 of 2001
(Old No. 1956 of 1989)

Prabhu Lal
S/o Sri Tara Dutt Lakhera
R/o Lakhera Provisional Store
College Road Chamba
District Tehri Garhwal.

…….. Appellant

Versus

The State

……. Respondent

Mr. Lokendra Dobhal, Advocate for the appellant.
Mr. H.C. Pujari, Addl. Govt. Advocate for the respondent State.

Hon. Prafulla C. Pant, J.

This appeal, preferred under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 15.09.1989, passed by Special Judge / Sessions Judge, Tehri Garhwal, in Special Trial No. 01 of 1988, whereby the appellant Prabhu Lal has been convicted under Section 3 / 7 of the Essential Commodities Act, 1955, and sentenced to undergo rigorous imprisonment for a period of one year, and also directed to pay fine of Rs. 250/-, in default of payment of which, the convict is directed to undergo rigorous imprisonment for further period of three months.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that accused / appellant Prabhu Lal used to run a shop of foodgrains at Chamba, District Tehri Garhwal under the name and style ‘Lakhera Provision Store’. On 24.11.1987, P.W. 4 Mohd. Iftikharuddin, Sub Divisional Magistrate, Pratap Nagar along with P.W. 2 Kishan Singh Panwar, Supply Inspector and Surendra Singh, another Supply Inspector, searched the Provision Store run by the accused / appellant, at 02:30 P.M. The aforesaid party of public servants found that the accused / appellant had stored rice and ‘gur’ in excess of the permissible limits of ten quintals, and thereby contravened the provision of Rule 3 of the Foodgrain Dealers (Licensing and Restriction on Hoarding) Order, 1976, and also Rule 3 of the U.P. Sugar and Gur Dealers Licensing Order, 1962. The excess quantity of rice was 02 quintals 90 Kgs., and the excess quantity of ‘gur’ was 06 quintals. The excess quantity of the food items were seized and recovery memo (Ext. A –2) was prepared by the party led by the Sub Divisional Magistrate. P.W. 3 Constable Raj Pal Singh recorded the first information report (Ext. A –3) and made necessary entry in the general diary, extract of which is Ext. A –4. After investigation, charge sheet was filed against the accused, in respect of the offence, mentioned above.

4) The trial court after giving necessary copies to the accused and hearing the parties, framed charge of offence punishable under Section 3 read with Section 7 of the Essential Commodities Act, 1955 read with the Foodgrain Dealers (Licensing and Restriction on Hoarding) Order, 1976, and the U.P. Sugar and Gur Dealers Licensing Order,

1962. The accused pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W. 1 Anoop Singh; P.W. 2 Kishan Singh Panwar (Supply Inspector); P.W. 3 Constable Raj Pal Singh; P.W. 4 Mohd. Iftikharuddin (S.D.M. Pratap Nagar, Tehri); P.W. 5 Vijay Kundalia (Investigating Officer) and P.W. 6 Rajiv Gupta (District Magistrate, Tehri Garhwal). The prosecution evidence was put to the accused under Section 313 of Cr.P.C., in which it is alleged that the prosecution case is false. On behalf of the defence D.W. 1 Raj Kumar; D.W. 2 Vinod Kumar; D.W. 3 Prem Lal; D.W. 4 Hem Chandra and D.W. 5 Lalita Prasad were got examined. After hearing the parties, the trial court found the accused Prabhu Lal (appellant) guilty of the offences punishable under Section 3 / 7 of the Essential Commodities Act, 1955. Again, after hearing on sentence, the convict is sentenced to rigorous imprisonment for a period of one year and to pay fine of Rs. 250/- under Rule 3 of the U.P. Goodgrain Dealers (Licensing and Restriction on Hoarding) Order, 1976. Prabhu Lal is further sentenced to undergo one years' rigorous imprisonment and to pay fine of Rs. 250/- under Section 3 / 7 of the Essential Commodities Act read with Rule 3 of the U.P. Sugar and Gur Dealers Licensing Order, 1962. Both the sentences were directed to run concurrently by the trial court. Aggrieved by said judgment and order dated 15.09.1989, passed in Special Trial No. 01 of 1988, this Appeal was preferred before the Allahabad High Court, from where it is received by transfer to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Learned counsel for the appellant fairly conceded that in view of the statement of P.W. 4 Mohd. Iftikharuddin, Sub Divisional Magistrate, Pratap Nagar, Tehri, which is corroborated by the statement of P.W. 2 Kishan Singh Panwar, Supply Inspector, charge of offence punishable under Section 3 / 7 of the Essential Commodities Act is proved on the record. However, learned counsel for the appellant pleaded that the offence is said to have committed in the year 1987, and now, almost 20 years have passed and in the circumstances sentence awarded to the convict may be reduced. In this connection, on behalf of the appellant attention of this Court is drawn to the case of ***Gurudeo Prasad Gupta Vs. State of Bihar; reported in 2004 Supreme Court Cases (Cri) 1738,*** and also to the case of ***S. Chinnasamy Vs. Seed Inspector, Coimbatore and another; reported in 2007 (57) Allahabad Criminal Cases 565 (S.C.),*** and it is argued that, since, the appellant has already undergo imprisonment for one month during investigation and trial, as such, the sentence awarded may be reduced to the period already undergo by the appellant.

6) Having heard learned counsel for the appellant and learned Additional Government Advocate for the State, and after considering the principle of law laid down in Gurudeo Prasad Gupta's Case (Supra) and S. Chinnasami's case (Supra), this Court is of the view that after a period of 20 years, no useful purpose would be served by sending the appellant to jail, and in the facts and circumstances of the case, the sentence awarded by the trial court can be reduced

in the special circumstances of the case, to the period already undergo by the appellant.

7) Therefore, the appeal is accordingly disposed of, affirming the conviction recorded by the trial court and reducing the sentence awarded by the trial court to the period already undergone by the appellant Prabhu Lal, during investigation and trial. The appellant Prabhu Lal is on bail. he need not to surrender. His bail bonds are cancelled and sureties stand discharged.

(Prafulla C. Pant, J.)

Dt. August 24, 2007.
H. Negi